

# IN THE SUPREME COURT OF NORTH CAROLINA

## **Order Adopting Amendment to Rule 25 of the General Rules of Practice for the Superior and District Courts**

Rule 25 of the General Rules of Practice for the Superior and District Courts is hereby amended to read as follows:

### **RULE 25. MOTIONS FOR APPROPRIATE RELIEF AND HABEAS CORPUS APPLICATIONS IN CAPITAL CASES**

When considering motions for appropriate relief and/or applications for writs of habeas corpus in capital cases, the following procedures shall be followed:

- (1) All appointments of defense counsel should be made by the senior resident superior court judge in each district or the senior resident superior court judge's judicial designee;
- (2) All requests for experts, *ex parte* matters, interim attorney fee awards, and similar matters arising prior to the filing of a motion for appropriate relief should be ruled on by the senior resident superior court judge or the senior resident superior court judge's designee;
- (3) All motions for appropriate relief, when filed, should be referred to the senior resident superior court judge or the senior resident superior court judge's designee for that judge's review and administrative action, including, as may be appropriate, dismissal, calendaring for hearing, entry of a scheduling order for subsequent events in the case or other appropriate actions; and
- (4) Subsequent to direct appeal, an application for writ of habeas corpus shall not be used as a substitute for appeal and/or a motion for appropriate relief and is not available as a means of reviewing and correcting non-jurisdictional legal error. If the applicant has been sentenced pursuant to a final judgment issued by a competent tribunal of criminal jurisdiction (*i.e.*, by a trial court having subject matter jurisdiction to enter the sentence), the application for writ of habeas corpus shall be denied. In the event the application for writ of habeas corpus raises a meritorious challenge to the original jurisdiction of the sentencing court, and the writ is granted, the judge shall make the writ returnable before the senior resident superior court judge of the judicial district where the applicant was sentenced or the senior resident superior court judge's designee. In the event the application for writ of habeas corpus raises a meritorious non-jurisdictional challenge to the applicant's conviction and sentence, the judge shall immediately refer the matter to the senior resident superior court judge of the judicial district where the applicant was sentenced or the senior resident superior court judge's designee for disposition as a motion for appropriate relief.

Adopted by the Court in Conference and effective this the 19th day of December 2002. This amendment shall be promulgated by publication in the Advance Sheets of the Supreme Court and the Court of Appeals. This amendment shall also be published as quickly as practical on the North Carolina Judicial Branch of Government Internet Home Page (<http://www.nccourts.org>).

Butterfield, J.

For the Court

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